

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

"JOHN DOE",

Plaintiff,

- against -

ST. FRANCIS PREPARATORY SCHOOL,
FRANCISCAN BROTHERS OF BROOKLYN
and BROTHER JOSEPH MUSSA,

Defendants.

Index No:

**PETITION FOR LIMITED
SEALING**

Plaintiff, "JOHN DOE," by and through his/her attorneys, OKUN, ODDO & BABAT, P.C., files this Petition against defendants, ST. FRANCIS PREPARATORY SCHOOL, FRANCISCAN BROTHERS OF BROOKLYN and BROTHER JOSEPH MUSSA, seeking an Order, pursuant to Civil Rights Law §50-b, permitting the plaintiff to file a Summons and Compliant anonymously as "JOHN DOE," pursuant to 22 NYCRR 216.1(a), permitting a limited sealing of the case specifically to the plaintiff's deposition transcripts and any documents that may lead to the plaintiff's identification in all future proceedings in this matter, together with any further relief this Court deems proper.

FACTS

This application is brought on behalf of the movant who has personal knowledge and where stated upon information and belief, alleges that he is now an adult who was molested and sexually abused by an employee of the defendant, Joseph Mussa. An affidavit by the proposed plaintiff is attached hereto. Defendant Mussa engaged in explicit sexual behavior and lewd and lascivious conduct with the plaintiff on multiple occasions between 1981 and 1982 in Queens County, as well as in upstate New York, Connecticut, Massachusetts and Pennsylvania on overnight hockey trips.

The crimes committed by Joseph Mussa against the then-minor plaintiff occurred predominantly at St. Francis Preparatory School and at St. Francis Preparatory School sponsored overnight hockey trips. At the time of these horrific deeds, both Joseph Mussa and his supervisor were employees of the defendants, St. Francis Preparatory School and Franciscan Brothers of Brooklyn.

When a case involves claims of sexual assault and sexual misconduct, courts have allowed a plaintiff to proceed under the use of a pseudonym. Doe v. New York University, 6 Misc. 3d 866, 786 N.Y.S.2d 892 (NY Sup. Ct. 2004), permitting the plaintiffs to proceed anonymously in a sexual assault case; Stevens v. Brown, 2012 N.Y. Slip Op 31823 (Sup. Ct., N.Y. County 2012), allowing the plaintiff to proceed under a pseudonym due to the deeply personal and sensitive subject matter involving sexually transmitted diseases; Doe v. Szul Jewelry, N.Y. Slip Op 31382 (NY Sup. Ct. 2008), permitting a plaintiff to use a pseudonym in an action involving claims related to sexual harassment; Jane Doe 1 v. Beth Israel Med. Ctr., 2018 N.Y. Slip Op 31964 (Sup. Ct.), where a plaintiff alleges sexual assault and misconduct.

Civil Rights Law §50-b also provides authority for the plaintiff to proceed anonymously in this case. Anonymity in a civil lawsuit under §50-b has been permitted where the action alleged relate to a criminal act where substantial evidence exists for a sex offense has been committed. Specifically, plaintiffs are permitted to proceed anonymously on cases that involve sexual abuse. Doe v. Szul Jewelry, Inc., 2008 N.Y. Slip Op 31382(U) (Sup. Ct.). To obtain anonymity, there must be a showing that the privacy interest involved is substantial, so as to overcome the presumption of openness that attends judicial proceedings. Doe v. Kidd, 19 Misc.

3d 782, 788, 860 N.Y.S.2d 866 (Sup. Ct. 2008). Plaintiffs' privacy interests, although not recognized under New York State's common law, is found in the Civil Rights Law. Stephano v. News Group Pubs, 64 N.Y.2d 174, 474 N.E.2d 580, 485 N.Y.S.2d 220 (Ct. of App. 1984); Arrington v. New York Times Co., 55 N.Y.2d 433, 434 N.E.2d 1319, 449 N.Y.S.2d 941 (Ct. of App. 1982).

New York Law presumptively favors broad access by the public and the press to judicial proceedings and court records, placing the burden on the party favoring sealing to show a compelling interest that likely would be harmed by granting public access. Mosallem v. Berenson, 76 A.D.3d 345, 905 N.Y.S.2d 575 (First Dept. 2010); Mancheski v. Gabelli Group Capital Partners, 39 A.D.3d 499, 835 N.Y.S.2d 595 (Second Dept. 2007). However, "the right of access is not absolute." Danco Labs. v. Chemical Works of Gedeon Richter, 274 A.D.2d 1, 711 N.Y.S.2d 419 (First Dept. 2000), and a court determining whether there is good cause for sealing court records pursuant to 22 NYCRR 216.1(a) must weigh the competing interests of the public and the parties, authorizing the sealing only in the prudent exercise of the court's discretion. *See supra* Mancheski v. Gabelli.

The Supreme Court conducted an independent review of, and made specific factual findings with respect to, each of the documents at issue, rendering a sealing order appropriately tailored to the circumstances. Notable, the court determined that only certain documents would be sealed O'Reilly v. Klar, 167 A.D.3d 919, 90 N.Y.S.3d 242 (Second Dept. 2018).


In the instant matter, the plaintiff is asking that in the litigation of this matter, that deposition transcripts be under a sealing order as well as any other documents, records, etc., that would contain names or pedigree information that could result in their identities being determined. Given the circumstances of the highly sensitive nature of the acts the plaintiff has

been subjected to, this strikes a fair balance and is narrowly tailored.

CONCLUSION

Accordingly, I ask this Court to execute the within Order letting the defendants show cause why an Order, pursuant to CRL §50-b, allowing the plaintiff to proceed as "JOHN DOE," and pursuant to 22 NYCRR 216.1(a), permitting a limited sealing of the plaintiff's deposition transcripts and any documents that may lead to plaintiff's identification in all future proceedings in this matter by the plaintiff against the defendants, ST. FRANCIS PREPARATORY SCHOOL, FRANCISCAN BROTHERS OF BROOKLYN and BROTHER JOSEPH MUSSA, together with such other and further relief as this Court may deem just and proper.

Dated: New York, New York
August 14, 2019

By: 
OKUN, ODDO & BABAT, P.C.
David M. Oddo, Esq.
Attorneys for Plaintiff
8 West 38th Street, Suite 1002
New York, New York 10018
(212) 642-0950
File: 11980

Index No:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

"JOHN DOE",

Plaintiff,

- against -

ST. FRANCIS PREPARATORY SCHOOL,
FRANCISCAN BROTHERS OF BROOKLYN
and BROTHER JOSEPH MUSSA,

Defendants.

ORDER TO SHOW CAUSE, PETITION FOR
LIMITED SEALING, ATTORNEY AFFIRMATION
AND SUPPORTING EXHIBIT

OKUN, ODDO & BABAT, P.C.
Attorneys for Plaintiff
8 West 38th Street, Suite 1002
New York, New York 10018
(212) 642-0950